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Air Traffic and NATCA Expand Neutral Evaluation -- An Alternative Dispute Resolution Process

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The 1998 National Agreement between the FAA and NATCA required that the parties meet within 180 days of the signing of the Agreement in an effort to develop an accelerated arbitration process. This process would be designed to encourage the parties to voluntarily dispose of grievance cases that might otherwise go on to binding arbitration. Arbitration is both time consuming and expensive litigation that can be avoided through processes such as Neutral Evaluation.

The Neutral Evaluation process was developed nationally and piloted in Southern and Northwest Mountain Regions (see *An Experiment in Alternative Dispute Resolution*, in the June 2000 issue of the Labor Relations Newsletter). The process is now being implemented nationwide.

Neutral evaluation uses a neutral third party to provide a non-binding evaluation of the case focusing on each side's strengths and weaknesses. Given this objective evaluation of their respective positions, the parties can make a decision on whether or not to continue litigation of the case. The parties select the neutral evaluator from a panel of certified arbitrators whom they believed are qualified through training and experience to render an impartial opinion of the merits of the case. It has been said that the neutral evaluation process is like taking grievances before a

grand jury of one person.

Neutral evaluation begins after the Third Level Review process for those grievances that the parties were unable to resolve. The parties may also agree to exclude a grievance from this process. Each party selects one person to present the parties' respective positions to the neutral evaluator. During the neutral evaluation conference the parties can mutually agree to ask the neutral evaluator to assist in settlement discussions. If the parties are able to resolve their differences on a case, the agreement is committed to writing, specifying all of the terms of the resolution of the dispute.

If the parties are not able to resolve their differences and resolution is not reached, the grievance may be moved to binding arbitration. The party that did not agree with the neutral evaluator's opinion shall incur full responsibility for the arbitrator's fee and expenses if it does not prevail at arbitration. Prior to neutral evaluation, the parties shared the expense of arbitration equally regardless of the outcome.

Arbitration by its nature is an adversarial process. In an era in which both labor and management have recognized that they share many of the same goals and aspirations and have formed partnerships, the arbitration process is a counterproductive means of settling differences of opinion. Arbitration is expensive including the arbitrator's fee, cost of hearing transcripts, cost of preparation, cost of witnesses, transportation, and other resources. Arbitration usually results in a winner and a loser and the resultant hard feelings. Neutral Evaluation will not solve all of our problems but it can help the parties find a middle ground in which we can discuss and resolve our differences in a more constructive atmosphere. The neutral evaluation experience will teach us to recognize the strengths and weaknesses in our cases, and hopefully bring them to resolution earlier.